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JAN 17 2006

OFFICE OF PETITIONS

In re Application of Graulich :
Application No. 10/605,207 : Decision on Petition
Filing Date: August 29, 2005 :
For: Motorcycle Saddle Locking Device :

This is a decision on the petition filed August 29, 2005, to accord the above-identified application a filing date of September 15, 2003.

The petition is **dismissed**.

The application was transmitted to the PTO on September 15, 2003.

On July 18, 2005, the Office of Initial Patent Examination mailed a Notice stating that a specification and claims were not present and that a filing date had not been accorded and the filing date would be the date of receipt of the missing items. The Notice also stated the declaration which had been filed was unsigned.

In response, the present petition was filed alleging that the missing items were filed as part of the application on September 15, 2003.

Petitioner states the following items were electronically filed on September 15, 2003:

- (1) 21 pages of specification including 1 page abstract, 2 pages claims, and 2 pages "Parts List,"
- (2) 13 sheets of drawings, and
- (3) an electronically signed declaration.

Overview of the Electronic Filing Submission Process:

Certain applications can be filed electronically using PTO provided EFS-ABX software/templates.

When the EFS file is created, all the information is put into XML (eXtensible Markup Language) that can be processed by USPTO. The specification, claims, abstract, and drawings are also put

into the PDF format (Portable Document Format). Some papers, such as drawings, must be filed as TIFF images.¹

EFS-ABX allows the user, at any time during the authoring process, to validate the application document to assure that all text is properly formatted, all required headings have been inserted, and images conform to size and format restrictions. Currently the official copies of all USPTO electronic application files are the electronic images of the EFS submission entered into the Office's IFW files. The document images stored in the Office's IFW system are the official records used during prosecution. The PDF version from EFS-ABX will be used to create the image version of the specification (description), drawings, claims and abstract. The PDF files are the source documents for the official records in the Image File Wrapper system (IFW) of the specification, claims, abstract and drawings. It is important to review the PDF files to verify that they contain the same information as was entered into the Word source application file. The Word source document file is never transmitted to the USPTO, and cannot be relied upon as evidence of the contents of the application as filed.

Once the application files are properly formatted, validated and viewed, EFS-ABX exports the document as a set of both XML and PDF files. These files are compressed and password protected so they cannot be altered without re-entering EFS-ABX.

The user then employs the submission software ePAVE (electronic packaging and validation engine) to attach the compressed and password protected EFS-ABX file package, complete common data elements and required forms, attach any desired external files (e.g. oath or sequence listing), apply an electronic signature to the application, encrypt the signed application, and electronically transmit the application in XML and PDF to the USPTO.

An electronic Acknowledgement Receipt including the Application Number and a Confirmation Number are produced and sent securely to the applicant as proof of a successful submission. The Acknowledgement Receipt also lists the files received by the USPTO with the name and the size of each file. The Acknowledgement Receipt serves as an "Electronic Post Card" and is assurance to the applicant in the event evidence of filing is ever needed.

An Acknowledgment Receipt may appear, in part, as follows:

| Doc. Name | File Name | Size (Bytes) | Date Produced (yyyymmdd) |
|------------------|------------|--------------|--------------------------|
| application-body | image1.tif | 90,000 | yyyymmdd |
| application-body | image2.tif | 110,911 | yyyymmdd |

¹ TIFF requirements apply to the following types of images:

- (1) Inline graphics (including complex chemical structures, math equations, tables, and custom characters). EFS-ABX automatically produces images that meet the requirements when the XML documents are exported.
- (2) Drawings (figures) – It is recommended that one Figure of drawing be included in each tiff file. EFS-ABX automatically produces images that meet the requirements when the XML documents are exported.
- (3) Declaration forms (These may also be submitted as XML files if they are created in ePAVE.)
- (4) Assignment documents
- (5) Small entity statements
- (6) Power of Attorney forms (These may also be submitted as XML files if they are created in ePAVE.)

| | | | |
|------------------|---------------|---------|----------|
| application-body | image3.tif | 101,405 | yyyymmdd |
| abstract-pdf | name-abst.pdf | 9,500 | yyyymmdd |
| claims-pdf | name-clms.pdf | 8,647 | yyyymmdd |
| description-pdf | name-desc.pdf | 20,567 | yyyymmdd |
| drawings-pdf | name-draw.pdf | 210,543 | yyyymmdd |
| us-declaration | name.tif | 60,434 | yyyymmdd |

The word "name" in the chart indicates a name chosen by applicant and may differ between file names.

The acknowledgment receipt contains a code which can be used to verify the contents of the application should an applicant allege a portion of the application was misplaced. An applicant, via filing a petition, can submit a paper version and electronic version (on floppy disk or CD-R) of the files as submitted. The code can be used to verify the electronic version of the application submitted with the petition is or is not identical to the electronic application originally filed.

Due to the automated process involved in filing and processing EFS applications, an applicant can "see" and review their submission over the Internet using the Private PAIR (Patent Application Information Retrieval) system a short time after submission, allowing applicant significant reassurance of successful receipt.

Analysis:

The PDF files are the source documents for the official records in the Image File Wrapper system (IFW) of the specification, claims, abstract and drawings. Each sheet of drawing would be expected to have a corresponding TIFF file. However, the Electronic Acknowledgment Receipt fails to list any PDF files or any TIFF files. A review of the Acknowledgment Receipt fails to indicate the missing papers were filed with the application.

Since the application will be assigned a filing date of August 29, 2005, the Office need not determine if the electronic declaration was signed or unsigned since the declaration filed on August 29, 2005, can simply be entered in the file with no harm to petitioner.

All the evidence present in the file has been carefully considered, but is not persuasive that the missing items were submitted with the original application.

If petitioner disagrees with the instant decision, petitioner may submit a copy of the electronic version of the papers as filed. The electronic copy should be a copy of the files after they were compressed and password protected. The electronic copy of the application files may be filed on a floppy disk or CD-R. The following code on the Acknowledgment Receipt can be used to verify the new electronic copy is identical to the copy filed on September 15, 2003:

Code: 4a42ae73a0f2fdd4918a9a09c8297722f6df1f0b

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time

under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.53." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

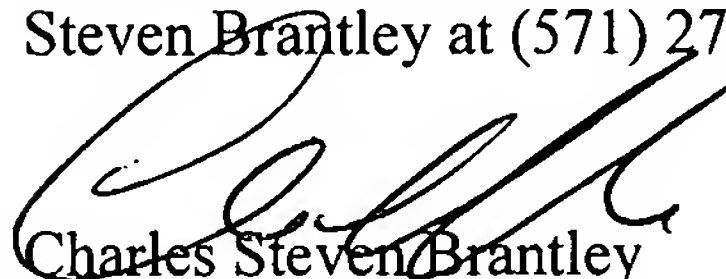
By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
 Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The Office of Initial Patent Examination will be informed of the instant decision so that it may assign the application a filing date of August 29, 2005, using the papers filed September 15, 2003, *and* the papers filed August 29, 2005.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions